MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

ELECTRIC INDUSTRY RESTRUCTURING RULEMAKING
DPU 98-100

LOW-INCOME COMMENTS

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LOW-INCOME COMMENTS[1]

I. THE DEPARTMENT'S ORDER IS A MAJOR STEP IN THE DIRECTION OF COMPREHENSIVE RESTRUCTURING

The Department's Order addresses all the key issues in restructuring, some to a great level of detail. It is clear that the Commission and staff labored long and hard to produce this document, and the exercise has advanced the issues greatly. In some areas, there is enough detail now proposed that, regardless of the merits, the Department has an implementable proposal. On many issues, the exercise of putting the policies into rule form has highlighted where more thought is required to develop specific, implementable rules. In either case, the proposed rule takes the Commonwealth another step in the direction of restructuring.

The Department's careful attention to universal service and Basic Service issues, and energy efficiency and environmental goals, along with market power questions, deserves particular appreciation. The risk of "deregulation without competition," and the reality that markets do not work well for all consumers, are key problems to be solved as the Department moves towards retail competition. The proposed 220 C.M.R. chapter 11 makes responsible efforts to address these questions. While we believe changes need to be made to the rule in a number of respects, we appreciate the resolve of the Department to address these issues.

The need to reduce rates for all consumers cannot be addressed without tackling the stranded cost question. The Department quite correctly rejected efforts by utilities to include items of expense that were incurred after its policy pronouncement on competition. While stranded cost recovery is a crucial issue, the low-income comments will not attempt to add to what is being said on the matter by other consumer groups, in particular the Attorney General. Similarly, these comments will not go over ground previously trod in our comments on market power issues, with the exception of a brief discussion of the order in which restructuring is carried out. And we follow the lead of parties with greater expertise in environmental issues on such topics as non-low-income DSM and renewables.

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[1] Filed by National Consumer Law Center on behalf of named individual low-income customers, as well as the Massachusetts Energy Directors' Association and the Massachusetts Community Action Association. The commenters again wish to thank Barbara Alexander for her contribution to these comments.

II. THE PROPOSED RULE ON ENERGY EFFICIENCY RESPONDS APPROPRIATELY TO THE FACT THAT MARKET BARRIERS WILL PERSIST, PARTICULARLY FOR LOW-INCOME CONSUMERS.

A. Keeping the Demand-Side Management Functions at the DISCO Level Makes Sense for Massachusetts

Competitive suppliers can, do today and will under restructuring, supply the energy efficiency that makes sense in a market. The role of utility-supplied DSM[2] is to overcome market barriers. Having the DISCO perform this function, as the Department proposes, is a sensible solution for Massachusetts. Utilities in Massachusetts have a long track record of DSM investment. While the experience has not been without issues, it is not necessary in Massachusetts to create a wholly separate institutional framework to deliver DSM services. The emphasis in Massachusetts, unlike some other states, has been on avoiding the need to develop wholly new institutional structures when possible. In light of this history, and particularly in light of the proposed requirement of a plan and a public review process, DISCO administration of these services makes sense for Massachusetts.

B. Plan Submission Requirement at Five-year Interval is a Good Tool to Achieve DPU Goals.

The proposed plan concept permits DPU supervision, but avoids the need for micromanagement. It permits a revisiting of DSM investments to make sure that market transformation is captured in plan modifications, and that progress towards goals is on track. It is a planning process, but permits quick adjustments. And importantly, it provides a periodic opportunity for public input.

C. Provisions For Use of Weatherization Assistance Program Subgrantees Is Excellent

The low-income commenters applaud the DPU's decision to require use of the services of Weatherization Assistance Program

[2] These comments will use the term "DSM" to signal the kind of efficiency investments undertaken in the public interest by a utility to achieve efficiencies in the face of market barriers that prevent market-driven efficiency from taking place, as opposed to the competitive efforts of ESCOs and alternative suppliers in a competitive market (by definition a different type and kind of investment).

subgrantees[3] to deliver DSM services to low-income households. For all the reasons in our April comments, we support this proposal. Such agencies have the following qualities that make them uniquely suited to give reality to the policy in favor of equity in the provision of DSM services:

1. Proven track record of weatherization and efficiency services
2. Close to the community being served
3. Used by many utilities already
4. Overseen by EOCD
5. Synergies of delivery - economies of scale in combining service with WAP and non-electric service delivery.

As the gas industry moves to retail competition, the DPU should build on its recognition of the positive role of Community Action Agencies, and consider fostering a fuel-blind pool for low-income "whole house" weatherization, with a pilot conducted now,[4] to capture even greater synergies.

D. The DPU Should Require Technical Potential Studies, And Periodically-Revised Plans To Work Off All Unserved Potential

To bolster the effectiveness of the rule, without micromanaging the utilities, the DPU should require that DISCO plans include an estimation of extent of technical potential for energy efficiency in the homes of low-income customers, and a plan to "work off" the backlog of homes over 10 years. This planning approach should not add work to the jobs of the DISCOs, as it is the sensible approach to the issue. The objective is to accelerate the progress in getting energy efficiency into the homes of low-income consumers. The historic track record in Massachusetts has been excellent policy, a number of different approaches to

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[3] This term is probably more accurate than Community Action Agency, the term used in the rule, because while Community Action Agencies are in fact the subgrantees of the Executive Office of Communities and Development for WAP weatherization (and thus the appropriate agency to tap for low-income DSM), subgrantees need not be CAPs.

[4] Perhaps with firms such as Massachusetts Electric and Boston Gas, both of which have shown leadership in the area of low-income DSM programming.

implementation, but a spotty record of achievement. Identifying the inefficiencies yet to be captured, and planning to capture them, is the sensible solution for the DISCO to pursue, under DPU supervision.

Requiring technical potential and work-off plans will also provide an opportunity to set an end-goal, and show progress towards that goal. While the technical potential may be a moving target,[5] this exercise of determining unmet potential and planning for the next five years the pace of work will assist DISCOs, customers and the Department in ensuring that the market barriers are identified and progress constantly made to overcome them. And, while it is likely that new measures and needs will get added to the list every five years, such a process will also capture changes in the market between plan submissions that obviate the need for further DISCO investment above the market.

E. There Is No Need to Choose Between Efficiency And Discounts For Low-Income Consumers: Both Are Effective, Both Are Needed.

In footnote 62, the Department suggested that a choice might be appropriate between energy efficiency and discounts for low-income consumers, and that one or the other might be more effective. There is no conflict between these two strategies. Both are effective for their particular purposes. Both are required, as they address different aspects of the problem. Discount rates address the immediate and chronic mismatch of income and bill. DSM addresses part of the bill excess for some customers in the short term, but only for those receiving the DSM service, and often not enough to render the entire bill affordable. It addresses the comfort and safety of the household served. And it addresses the resource costs and sustainability need of the entire electricity system.

The underlying problem from the perspective of the low-income consumer is the chronic mismatch between funds and the bill. Even

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[5] Low-income families tend to move frequently, and families move in and out of poverty as the result of death, divorce, job loss and the like; thus there is no absolutely demarcated set of "low-income" housing that remains permanently fixed. However, there are identifiable neighborhoods that can be targetted, where over time the predominant occupancy is by low-income families.

assuming reductions in energy costs from competition, and perhaps even hoping for moderation of distribution costs from PBR[6], there will be customers who are paying too high a percentage of their income to sustain a healthful use of electricity over the long term (more than a few months at a time, e.g.).

From the DISCO's perspective (and thereby from the point of view of all the ratepayers who are asked to share the consequences of non-payment), the chronic inability to pay prompts credit and collection activities, not all of which are cost-effective given the underlying financial barrier. Given their druthers, and adequate protection from risk, DISCOs and suppliers both do not want to deny service or disconnect customers, on humanitarian as well as liability grounds. They have an interest in their product being affordable. From the DPU's perspective, all the above factors come into play.

Discounted bills are cost-effective tools to achieve universal service. As discussed below, the most cost-effective technique of delivering discounts is to peg the bill to an affordable percentage of income. Savings[7] from bringing a bill to an affordable level include the following: (a) avoided dunning letters and calls, (b) avoided termination notices, (c) avoided terminations, (d) avoided reconnections, (e) avoided credit agency fees, (f) avoided court costs and attorney fees, (g) working capital costs.

The credit and collection costs that are avoided via an affordable rate may not equal the bill reduction provided via the discounted rate. However, it was never the DPU's policy that low-income utility affordability be premised on internalized cost-effectiveness grounds. Indeed, when the Department began visiting the issue of low-income rates, the concept of avoided credit and collection costs had not yet been enunciated. That there are offsetting savings is a newly-identified benefit of making bills affordable.

To the extent that in a retail competition model these costs are split between those that the DISCO incurs on behalf of all

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6 The low-income commenters have not made a secret of their skepticism about these benefits, but that is beside the present point.

7 Savings here includes diverting funds from a use that does not benefit the customer OR the utility, to one that benefits the customer and costs no more to the utility.

customers, and those that the supplier incurs or does not incur, the question becomes more complicated, but the result should be the same. That is, on the one hand the DISCO portion of the savings will be smaller than the level of discount, and on the other the supplier may argue that it is not obligated to serve, thus avoiding the problem in the first place. However, this analysis would be only a partial analysis. In effect, it ignores the DPU's commitment to universal service. [8]

In some cases, the unaffordable bill is higher than it needs to be, because efficiencies of end-use have not been captured. Typically, this is because the family cannot afford DSM measures, is ignorant of them, or has no incentive to improve the landlord's property for benefits that will not accrue to the tenant during a short tenure in the premises. DSM is intended to overcome precisely these barriers to efficiency maximization. DSM investments made as a result of this analysis will definitely assist the customer in the short term, and thus benefit the DISCO and suppliers, and their other customers. DSM to the extent it renders a bills affordable tends to capture similar credit and collections savings, but has the added benefit of lowering system resource costs.

However, DSM cannot carry all the freight. The low-income customer group is not a monolith, all with identical usage profiles, income profiles, and bill-paying challenges. For a few low-income customers, DSM savings will be big enough that the resulting drop in bill will be enough to render it affordable. For most, DSM will help, but not obviate the problem. In addition, there is a problem of institutional capacity to achieve 100% of all

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[8] That is, either a "pay or play" obligation on the part of all suppliers, or a "supplier of last resort," or both, will be created to effectuate the DPU's universal service policy. In either case, the credit and collection costs associated with the provision of energy, as well as distribution-related services, will be internalized to the body of customers generally. The costs will be incurred by the supplier of last resort, or by the suppliers serving low-income customers in the aggregate, and these suppliers to be made whole will be reimbursed, ultimately if possibly not directly, by all ratepayers. Thus we can conceptualize the credit and collection costs as system costs, even if the "system" will be comprised of separate corporate entities with different functions.

savings. Low-income DSM is more likely to be limited to retrofit than for other customers where new construction and new appliance purchasing are more common. Retrofit takes time, and the budget constraints will probably not permit a pace faster than the 10 years proposed by the low-income commenters. Even those customers whose bills would be rendered affordable by DSM may not see the usage reduction for some time.[9] Discounts and DSM are not mutually exclusive; they are mutually reinforcing.

III. WHOLESALE COMPETITION MUST BE WORKABLE AND IN PLACE NO LATER THAN THE INTRODUCTION OF RETAIL COMPETITION

As the Department states, the benefits of competition will not accrue absent market structures that ensure fill and fair competition.

Absent full and fair wholesale competition, retail competition will fail of its objectives. Retail competition cannot cure defects in wholesale competition. Where the DPU lacks jurisdiction to effect its vision of a robust wholesale market, it should either delay retail competition pending action by entities with jurisdiction or propose an alternative, workable vision that is within its jurisdiction, together with a plan to promote sound policy by those entities with jurisdiction.

Areas where the DPUs jurisdiction over market structure is in doubt include the creation of an ISO, a power exchange, and divestiture of generation.

IV. THE DEPARTMENT SHOULD ENSURE THAT A FULLY EFFECTIVE SET OF NORMS GOVERNING RELATIONS BETWEEN ENERGY BUYERS AND SELLERS/BROKERS IS IN PLACE BEFORE OPENING MARKETS TO RETAIL COMPETITION.

Market forces are not used exclusively in any business. All businesses have norms of conduct that have developed over time. Electricity is a necessity, and the Department has a public service obligation to ensure that the market norms work to serve all Massachusetts residents. Consumers, particularly residential

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9 Although this discussion does suggest that DSM should be targeted to the high-risk customers to the extent possible: the lowest income, highest usage customers, and those low-income customers with chronic late-payment and arrears problems.

consumers, must be protected by "Rules of the Road."[10] However, the rule as drafted appears to contemplate no access, billing, collection or termination regulations for any but the DISCO in its Basic Service Capacity. While the DPU may not wish to incorporate 100% of the current consumer norms to suppliers (including marketers, aggregators, etc.), nor should it leave the relations between customer and supplier merely to what bargains will be struck in the market.

Reliability is a major concern of the public around restructuring. Reliability does not only mean enough capacity, but also the ability to obtain supplies. Market norms do not typically insist that all suppliers are obliged to serve everyone, but the DPU rightly recognizes that maintaining no protection for supply access is a non-starter in the context of the supply of electricity. Thus, the barriers to access that can be thrown up by unwilling suppliers if the DPU's customer service rules are not applied to them must be addressed.

Exempting competitive suppliers[11] from all consumer protection norms will also stifle competition. Customers will stick with a firm that is under supervision and subject to basic norms of sound dealings.

Rogue or Fly-by-Night competitors encouraged by the lack of oversight will also threaten competition, by discrediting the concept. In Toronto, gas marketers went door-to-door offering toasters to sign up residential customers. Some of these outfits could not deliver on their promises, and the former merchant LDC had to cover for them. COCOTs operators flout the DPU's authority,

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[10] Indeed, one of the reasons capitalism has not taken deeper root in the former Soviet Union is that the state has not exercised its power (if it still has the power) to create and enforce market norms of fair dealing. Without such norms, consumers and suppliers cannot trust one another, nor the bargains they make. This in turn stifles commerce. Paradoxically, until the state in the former Soviet Union becomes stronger and focussed on cracking down on fraud and deceit, commerce will languish and capitalism's promise will be unfulfilled.

[11] Meaning here anyone who has the retail contract with the end-user, particularly the residential consumer, whether it be a generator, an aggregator, a marketer, or even a broker.

leaving illegal pricing, illegal charging, and high rates in place in their machines, and leaving customers "stranded" at any given street corner where they may need to make a call. Hotels incur ill will among their customers by tacking on surcharges for phone calls made from the room - the cost is not high enough to use a different hotel, but the customer is captive, so the practice takes advantage of a loophole in the market, in the absence of regulatory oversight.

There are other utility-specific forms of customer service abuses that the Department can anticipate if we go to unfettered competition. Slamming, the involuntary switching of suppliers, will happen in electric service as it has in long-distance. The Congress has just tightened up again on the anti-slamming rules, but slammers are clever and resourceful, and vigilance must be maintained to keep on top of the latest dodge.

Market rules are needed as well because markets do not function well in serving small customers with low incomes, particularly in minority neighborhoods. It is by now well documented that the poor pay more for services and goods that are often of inferior quality. Redlining[12] has been documented in the banking and insurance industries, and can be expected in the electric industry. Discrimination in sales to minorities and women has been documented in the automobile industry.

Reverse redlining[13] is another risk of an unsupervised market where unscrupulous actors prey on unsophisticated consumers. An electron is an electron, but the price and availability may not be there when the customer is a low-income family.

V. THE RULE SHOULD CONTAIN NORMS TO GOVERN CREDIT TERMS, DEPOSITS, BILLING (ACCURACY, TIMING, BASIS, CONTENT), COLLECTIONS AND DISCONNECTIONS

The primary way that suppliers will avoid seek to avoid service to customers they have privately labelled "not worth the bother" is by imposing credit hurdles too high for low-income

[12] The practice of drawing a "red line" around certain neighborhoods and failing or refusing to do business in them.

[13] Selling unneeded services and goods to unsophisticated consumers in impoverished neighborhoods (e.g. pushing loan "flipping" to drive up credit payments).

customer to overcome. The Department should reinforce the anti-discrimination provisions of current law, should limit certain credit practices, and should require reporting to permit monitoring and head off abuses.

A. Existing Credit Norms: Supplement and Enforce

1. Equal Credit Opportunity Act

Some uses of credit barriers by suppliers will be illegal under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1601-1681t(1974), as amended by P.L. No. 94-239, 90 Stat. 251 (March 26, 1976). See also Regulation B, 12 C.F.R. § 202. The ECOA applies to any grant of "credit." Credit is broadly defined in the Act. Under the ECOA, credit is extended when the agreement contemplated deferred payment for the obligation (e.g. paying for electric service based on metered sales), whether or not a finance charge is in place, and even if the deferral is for a short time period.[14]

The ECOA prohibits discrimination in the granting of credit on the basis of race, sex, marital status, familial status, religion, national origin, age, handicap, public assistance status, and exercise of rights under federal consumer protection statutes. This prohibition includes not only denial of credit, but the granting of credit on differing terms, e.g. deposits, payment terms, meter requirements, etc. The prohibited factors cannot be explicitly relied on by the creditor even if one or more of the factors correlate positively with poor credit risk. This aspect of the law is the prohibition on "disparate treatment." Thus, if a supplier requires that AFDC recipients pay to have a prepayment meter installed before extending service, this distinction in whether or not credit is granted on the basis of receipt of public assistance is a violation of the Act.

The ECOA goes further. It also prohibits conduct that results in disparate impact on the members of the protected groups. This is the "effects test." If a customer can prove that the zip codes of the areas where a supplier proposes to do business include only predominantly white areas, and do not include predominantly

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[14] The Federal Reserve Board has exempted regulated utility sales from certain aspects of the rules not relevant for this discussion (spousal credit history use, 12 C.F.R. § 203(a), but even this exemption only applies when the reates and terms for the credit are approved by a regulatory commission.

African-American areas, this redlining would be prohibited by the ECOA, even if no animus or discriminatory intent is present. Similarly, if the percentage of welfare recipients in the non-served areas was disproportionate to the percentage of welfare recipients in the population as a whole, a case could be made of discriminatory impact.

The Federal Reserve Board Official Staff Commentary puts it this way:

> The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.

FRB Official Staff Commentary, § 202.6(a)-2.

The effects test was developed under federal employment discrimination cases. Griggs v. Duke Power Co., 410 U.S. 424 (1971) and Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975). The Federal Reserve Board's Regulation B explicitly states that Congress intended to apply this test to the ECOA.

Some examples of discrimination that would be illegal if done with discriminatory intent or purpose include:

a. pre-application discrimination (offices in white neighborhoods only)
b. applications proceedures favoring or disfavoring customers based on prohibited bases, Reg. B, 12 C.F.R. § 202.2(m).
c. Credit evaluation and denial of credit (cannot use any prohibited bases in a credit evaluation system; a utility or supplier cannot deny service on credit, or require a deposit, on grounds that applicant's spouse or former spouse owes a delinquent utility bill, or a consumer is a welfare recipient, e.g.).
d. Discrimination in requirement of immediate payment (e.g. prepayment meters for some customers only).
e. Discrimination in credit limits (e.g. service limiters, length of time of nonpayment before

credit action, amount of bill outstanding before credit action, etc.).

f. Discrimination in authorized users of credit.
g. Discrimination in required deposits, collateral, guarantors, other security.
h. Discrimination in payment terms.
i. Discrimination in price of underlying good or service.
j. Discrimination in changes to account status.
k. Discrimination in treatment in event of default.

Federal law does not preempt a state from augmenting these provisions, or adding its own enforcement procedures to the purposes of the statute.

2. Fair Credit Reporting Act

The FCRA, 15 U.S.C. §§ 1681 -1681t (1971), primarily regulates creidt reporting agencies. However, it imposes a duty of disclosure when a creditor makes use of a credit report in making an adverse credit action. Actions would include denial of credit, requirement of a deposit, change in credit terms, etc. The law applies to utilities, and would certainly apply to retail electricity suppliers. However, it does not prohibit the use of credit reports. It would be legal under FCRA (assuming no violation of ECOA), to seek credit reports on all applicants, and impose deposits based on an interpretation of poor creditworthiness.

That is, customers may be denied electric service[15] based on the failure to pay a Sears bill any time in the period for which a credit reporting agency keeps data, without violating the FCRA. Thus, the Act provides some protections for payment-risk customers, but does not in and of itself protect them from denial of service for non-payment of non-utility bills.

Studies performed by Hydro-Quebec and the Pennsylvania Public Utilities Commission Bureau of Customer Service have established that most customers who are struggling to pay their energy utility bills pay their shelter costs first, and then their energy utility bills, with all other bills paid in lower priority. Thus, risk of non-payment should be put in context, and weighed against the risk

[15] Or face onerous, disparate, or impossible deposit or prepayment terms.

of denial of service for non-payment of non-utility bills.

Note that if a DISCO supplies credit history to a supplier, who uses it to deny or condition credit, the FCRA disclosure requirements are triggered and the DISCO has become a "consumer reporting agency" within the meaning of the statute. This fact has caused utilities not to share credit history between themselves, because of the required disclosure, and the potential liability to which they are subjected.

3. ECOA and FCRA Are Not Sufficient

Unless the Commission, or some similar regulatory body, has independent jurisdiction to prevent unfair credit practices, enforcement of the principles of the ECOA will lag. Few dispute that discrimination among customers accepted by suppliers will emerge unless monitored and prevented via oversight. Indeed, some argue that markets should discriminate and that this is a positive aspect of the move to markets. This view is honest, but ignores the impact of unfettered discretion in agreement to serve customers.

Absent DPU oversight, the remedy for a consumer who has been denied in violation of the ECOA is a lawsuit. Marketers may well prefer the deft hand of DPU oversight to the blunderbuss of a class action. Also, the federal laws do not go far enough in the types of customers they protect. They do not establish affirmative duties or obligations in the process of applying for electric service. And they leave too wide a range for discriminatory denial or conditioning of credit. Unless further enforcement is undertaken, and further norms are established and enforced, customers will be denied service on grounds that have not been permitted historically and that are unfair in dealing with a necessity.

B. Proposed Grounds For Extending/Denying Credit

The entire exercise of moving to competition is to find the right balance between complete discretion on the part of the supplier, and limits on the exercise of that discretion to protect access to a necessity and fairness between customers. While some picking and choosing of customers must be tolerated in a competitive market, it is possible to put reasonable boundaries on such choices, and still attract suppliers ready, willing and able to serve the Massachusetts retail market.

With this in mind, the following provisions should be added to the Rule:

1. A retail energy supplier may not take adverse credit action based on any of the bases prohibited by the Equal Credit Opportunity Act.

2. A retail energy supplier must maintain written policies on applications for service and the basis for its determination of credit. The supplier must make this written policy available to any consumer on request. The policy must describe the criteria for becoming a customer of the supplier. These criteria must be filed with the Department upon application for license/registration, and the filing must be updated as they change. No policy may be applied that has not been first filed with the Department. The change in policy may take effect the next business day after filing, unless otherwise ordered by the Department.[16]

3. A retail energy supplier may hold itself out as serving customers with a particular set of end-uses or load curves, or who meet other criteria related to the generation source and pricing policy of the supplier, so long as such criteria do not have the effect or intent of discriminating among customers on the grounds prohibited by the ECOA.[17]

4. A retail energy supplier may demand a deposit of

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[16] This norm does not bar all discrimination between prospective customers. What it does accomplish is to ensure that the selections of the suppliers are not arbitrary and ad hoc - that similarly situated customers can have confidence they will be treated evenhandedly. It will provide information needed to head off illegal discrimination. It will also give consumers information necessary to shop around on the basis of credit terms.

[17] This rule would enable a supplier to say to the public "we only supply industrial customers," or some similar restriction. But if a supplier takes residential customers and yet manages to find a formula for a load-shape that disproportionately excludes customers who belong to a protected group, this restriction would not be permissable.

any customer on the basis of the customer's history of payment of utility bills in the last 24 months, as a condition of service, but the deposit shall not exceed the average of two monthly bills for service by that supplier. A retail energy supplier may not require a deposit in any other circumstance.[18]

5. A retail energy supplier cannot require payment of any unpaid bill to other energy suppliers as a condition of granting service to a prospective customer, or demanding a deposit or other security, nor can the supplier require payment of any prior unpaid bill owed by any other member of the household.[19]

6. A retail energy supplier must maintain a map showing the geographic area in which it proposes to seek customers. This map must be filed with the Department as part of the license/registration application, and must be updated as conditions change. A retail energy supplier cannot discriminate against any customer in this geographic area unless the supplier determines that the applicant is not creditworthy within the meaning of the supplier's written credit policies. A retail energy supplier may not discriminate in pricing or access to services based on location within the geographic area identified on the map.

7. A retail energy supplier may not deny energy

[18] This provision puts reasonable bounds on the unfettered discretion to use any form of credit history as a basis for distinguishing between customers, while permitting liberal use of arguably relevant data: the history of paying similar utility bills in a reasonably recent time period.

[19] This proposal covers two topics. First, it continues the long-standing ban on using collateral matters as a basis for determining creditworthiness for utility service. Second, it memorializes the prohibition on imputing liability for a bill to someone who may have benefited from the energy for which the past bill was rendered, but who was not contractually obligated to the supplier.

service for non-payment of the non-energy portion of a bill (e.g. merchandizing and jobbing, efficiency services, etc.).[20]

8. Definition of "Customer" and Associated Bill Responsibility: Third-Party Billing and imputed responsibility for roommates and family members should be prohibited, as a violation of implied contract law, as well as, in some cases, ECOA. Especially if the suppliers claim the right to apply credit screens not permitted to regulated utilities, they should not then be able to claim a reasonable expectation of payment from a non-customer or former customer as a condition of serving a current applicant for service. To permit otherwise is to violate the common law of contracts.[21]

9. Upon a complaint of prohibited discrimination, and after notice and hearing, a finding of probable cause by the Department, and Order of the Departmenta retail energy supplier shall provide service to the complainant on the same terms and conditions as offered and provided to similarly situated customers. The Department may order that the supplier survey a random sample of its customers to determine the extent to which its customer base includes representative numbers of customers in a class or classes protected from credit discrimination by the ECOA. Upon further hearing and a finding of prohibited discrimination, the Department may make such orders with respect to the supplier's credit practices as are necessary to prevent further such discrimination.

10. All retail energy suppliers must keep records of the number of residential applications for service, the number denied on account of poor credit (broken down into reasonable categories of risk), the number from whom deposits were received, and the average and total amount of deposit. These records must be made available to the DPU on request.

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[20] Ditto.

[21] Ditto.

11. Prepayment meters and service limiters: Suppliers (and DISCOs) should not be permitted to insist that customers with poor credit history take service under such meters and limiters. France's experience shows that these devices turn into self-executing disconnection devices, with no supervision nor opportunity to head off the consequences of disconnection.

C. Other Credit and Collection Rules Applying to Suppliers

Abuses of the fact that consumers require electricity will not be limited to credit discrimination. Less elastic customers will see fewer options among suppliers as to credit, billing and collection terms. Unless there is some control over these terms, the market will not prevent gouging of consumers, or protect against lack of control over electricity choices.

To respond to these concerns, the rule should cover the following topics:

1. State Sanitary Code

The Rule apparently does not apply to any customer not taking Basic Service the provisions of 220 CMR c. 29 (billing procedures for residential rental property owners cited for violation of State Sanitary Code) to suppliers. This provision must be applied to entire bill, not just distribution component, and protect all customers, not just Basic Service customers.

2. Protections for Tenants in Event of Landlord Default.

Most premises where bill not in landlord's name will not be on Basic Service (i.e. commercial landlords will choose a service) and as rule is now written, protections of rule for notice to tenant and opportunity to take over as customer in own right are dropped (sub silentio). The tenant "notice and right to take service" rule is statutory and should be restored to the regulation applying to all suppliers. It is good policy, too. It makes no sense to deprive tenants of protections of rule and opportunity to avert disconnection and become customers because of a landlord's choice of supplier, over which the tenant had no choice.

3. Accuracy of Billing

There must be recourse for claims of inaccurate billing, and a prohibition of termination during period of dispute.

4. Truth in Labelling - Green Pricing

Standards should be developed to determine the veracity of claims that power is supplied from renewable sources. A standard definition of green power will spur this market on, and head off controversies concerning the bona fides of claims that power being delivered to end-users is green power.

5. Prohibition against late fees (now only applies to Basic Service).

Typical commercial late fees overcharge customers. A flat fee, for example, is imposed without regard to the underlying cost to the supplier.[22] They are ineffective in motivating timely payment behavior in customers without sufficient funds or customers with large amounts of funds. For low-income customers, they only compound the sense that there is no point trying to make the payments. Competitors do not in fact compete over late fee terms - thus the market does not discipline these practices, and regulation must continue to protect consumers from this inefficient overcharging.

6. Privacy/Value of Information To Consumer

Not only should DISCOs not be permitted to give information on customers to any supplier without advance permission from the customer on a case by case basis, but the DISCO should sell the information rather than give it away for free. The rule should also clarify or specify further the types of information that are subject to the confidentiality protections. Name, address, telephone number, meter number, load, usage, load profile, and payment history are the minimum types of information that should be kept confidential. This information is property that rightfully belongs to the customers. The affiliate transaction rules should prevent unauthorized access of affiliate marketers/suppliers as well. DISCOs should be required to report to the Department the

[22] Some late fees can be usurious. See, e.g. Kathleen E. Keest, The Cost of Credit: Regulation and Legal Challenges, ¶ 7.2.4, "Delinquency Charges," National Consumer Law Center, Boston: 1995.

circumstances of delivery of this type of information to suppliers.

A complaint mechanism and penalties for breach of confidentiality should be set up. The DPU should not assume that customers want marketers to have this information so as to better market their services to the customers. Indeed, the DPU should assume the contrary - customers assume the privacy of this information, and will be angry to learn that at government instance it is being freely given out to competitive companies.

7. Protected Customers

G.L. ch. 164, Sections 124A-124I, 125 [statutory recognition of winter disconnect rule, infant and elder hardship rule, no disconnection for non-payment of a collateral matter, reconnection upon payment of bill, etc.] cannot be waived by DPU. In addition, it would be poor policy to apply these rules only to customers taking Basic Service. As with other exemptions for suppliers serving non-Basic Service customers, the result is a "Basic Service ghetto" of the elderly, the ill, those with infants, the poor, and any others with special protections by statute or rule.

These customers will be denied competitive energy service or discouraged from obtaining competitive service by suppliers once they have self-identified or taken advantage of the protections afforded. They will be "stuck" in Basic Service and not be able to take advantage of the market. Thus, the rules should apply to all suppliers.

To give effect to these statutes, a "pay or play" rule should be adopted. This provision would allow a supplier to comply by applying the statutory standards to qualifying customers. A supplier without such customers would pay an access fee to the DISCO that would reduce the Basic Service revenue requirement.

8. Supervision over reconnection fees should be maintained.

Especially in case of low-income payment-troubled households, pancaking disconnection and reconnection fees on to past-due charges only makes it more difficult to restore service, but does not expand the amount of funds available to pay the bill. If suppliers exact separate reconnection fees, the level of these should be controlled by the DPU. Reconnection fees may also be used as a device to eliminate payment-risky customers from service without triggering application of the credit policy, and this practice should be prevented.

9. Complaint resolution

The DPU should clarify that it retains complaint resolution authority over energy portions of the bill. The alternative is to push disputing parties into the courts. The DPU has a nationally recognized and effective Consumer Assistance Division, that counsels tens of thousands of consumers a year, handling all but the tiniest fraction of disputes via advice and informal mediation. This process is a great resource for all disputing parties, and should not be withheld from disputants with issues about energy supply agreements. Note that in the telephone industry, disputes that were not jurisdictional to the

10. Right to Change Suppliers

The rule allows customers to change suppliers (Section 11.05(9)(a)), but the proviso "subject to any contractual obligation to a supplier" negates the right, at least in the case of small customers who will be taking service under generic terms not negotiated on an individual basis.

In addition to notifying the DISCO of a discontinuance of the supply relationship, even if voluntary, the supplier should be required to notify the consumer, so that the consumer can verify his or her status, and mistakes can be remedied.

The rule should provide for a convention (e.g. midnight of the date stated on the agreement for termination) for the "cutover" from one supplier to another. This is needed for wholesale settlement purposes, and clarity about responsibility when energy relationships change but energy continues to flow throughout.

11. DISCO Access vs. Non-DISCO Bills

There should be no denial of DISCO access for non-payment of a non-DISCO bill. The language of the rule suggests the DISCO can deny access for ANY unpaid bill, § 11.05(7)(a)(1). This provision must be eliminated, and denial of access restricted to customers who have not paid a bill owed to the DISCO itself. It is anti-competitive to enable a creditor (a given supplier) to use the threat of denial of essential service (not only access, but supply by a competitor of the creditor in question) as a tool to collect competitively-accrued debt. Particularly where there is no DPU-supervised dispute resolution, it is unfair to use DPU-approved access denials to enforce a private debt.

12. Adequacy of notices of proposed termination, and its consequences.

Notices under the new system will have to be revamped to track the different relationships and rules that apply to different situations. If a DISCO bills and collects for a supplier, the notices must spell out carefully the consequences of partial payment and non-payment. Customers will assume they could be disconnected for non-payment even of the competitive portion of the bill. Notices should advise them of the Basic Service provisions.

The notice from a supplier (whether given by the DISCO on its behalf, or separately in the case of separate B&C), should specify a new situation, called here inelegantly the "End of Electricity Supply Contract with Company X." This notice should be given 14 days in advance, time enough to line up a new supplier if need be. The notice should specify the reason for the termination of the supply relationship (better language needs to be found for this event, to avoid confusion with disconnection), with reference to the credit policy on file with the DPU. The notice should spell out the terms of Basic Service and the fact that Basic Service will kick in if no arrangements are made with supplier "X" before the expiration of the notice period. It should remind customers of their right to contract with another supplier at any time.

13. Clarity on bill re: whose billing for whom and who owes whom and consequences of partial payment, nonpayment.

All who engage in billing and collection should be required to make plain on the bill which entities are the parties in interest on the bill, and the relationship between the entity tendering the bill and the entities on whose behalf the billing party is collecting.

A rule is need on the allocation of partial payments in the case of joint billing. In the absense of explicit instructions from the customer, the DISCO should assume that the priority is to retain service, and apply the payment to DISCO charges first. In the case of Basic Service, as disconnection presumably will be permitted if partial payment of the total bill reaches the regulatory thresholds, allocation is not required from the point of view of determining disconnection policy. But a rule may be required if Basic Service energy is provided directly by a third party, and the debt for that portion of the bill is owed not to the DISCO, but to that third party.

The rule should be clarified to spell out the relationship between the provision stating that the distribution company shall remain a billing authority, and proposed 11.05(b)(b), which provides that a supplier may request separate billing for generation service.

14. Price of DISCO B&C to Suppliers - Market-Based

While the rule does not require use of the DISCO service, and should not, it is likely that most suppliers will opt for the DISCO billing and collection service. There are risks to customers, and benefits to suppliers, that must be properly managed. Customers must be advised that they cannot lose service for non-payment of the supplier's bill, unless they are receiving Basic Service. However, even this notice will be ineffective in practice, and customers will be frightened into giving competitive suppliers preference over other creditors (such as telephone companies, gas companies, landlords, and the like). This is anticompetitive. To the extent competitors want the benefits of a competitive market, to the same extent they should not be able to piggyback on the utility protections of competition. At the very least, in addition to the notices, the DISCO should be reimbursed (and required to flow through to customers) the value to the supplier of the joint billing.

Indeed, in addition suppliers should pay up to $1 and transaction costs less than the cost of billing and collecting on their own. That is, DISCOs should drive hard bargains for their billing and collection service on behalf of the distribution customers. Failure to do this should result in imputation of income.

D. Metering, Wholesale Settlements

The rule presently lacks the provisions necessary to prevent customers from being required to invest in real-time meters in order to obtain service. This issue cannot be left to the competitors, as it requires a wholesale settlements process (the issue is the divvying up of cost responsibility between all those with retail customers and with supply going into the system, not divvying up responsibility between retailer and customer).

Either the Norway method or the MECO proposal should be adopted. However, it should be spelled out in the rule, and not left to later or left to chance.

In addition, the DPU should look at the meter accuracy statutes, and determine its jurisdiction over accuracy of meters, particularly if it is contemplating opening up the provision of meters to competition. The foundation of the billing and collection system is the accurate meter.

Also, before opening up the metering business to competition, the DPU should consider the implications of competitive metering on its ability to administer sound termination policies. If the meter is pulled, the customer is disconnected. The Department should prevent this occurence when not authorized by the provisions of its comprehensive restructuring rules.

VI. PROPOSAL ON PRESERVATION OF DISCOUNTS ON BILLS IS GOOD START; NEEDS CLARIFICATION AND STRENGTHENING; DPU SHOULD TAKE THIS OPPORTUNITY TO INTRODUCE PIPPS

A. Proposed Rule Mechanics Require Clarification

The present rule language is not clear on the mechanics of the new discounts. It appears to say that the percentage discount on the distribution component of a combined total bill will be increased to the point that the resulting percentage decrease from the new combined bill will be equal to the percentage decrease formerly resulting from the application of whatever percent discount was available to customers on whatever portion of their bills the discount in effect as of the date of restructuring. This may sound complicated, but it's actually clearer than present formulation in proposed rule. This formulation could be cleaned up to be less convoluted, but it should be possible, when reading the rule, to develop an algorithm that expresses what is multiplied by what and subtracted from what in order to arrive at the actual bill.

B. Running all discounts through the DISCO makes sense, on balance, despite certain problems.

1. Ease of administration: no separate fund.

The proposal to have a discount applied entirely to the DISCO component of the bill is easier to administer than any system involving the energy portion of the bill. Any system involving the charges levied by suppliers would have to require the offering of the discount by all suppliers for any low-income customer, or develop a funding pool to reimburse suppliers to the extent they had and honored discounts to eligible consumers. Not only would a fund have to be gotten up via a pooling of some kind of contribution[23], but any supplier-involved method would require some basis for applying the discount. That is, it would be necessary to determine the base to which the discount is applied. This in turn would force a choice between use of the actual rates offered by the supplier to non-eligible customers (balkanization) or some statewide average (resulting in uneven levels of discount).

2. It creates a level playing field for suppliers.

All suppliers would sell into markets where low-income customers were treated identically based on similarity of circumstance, and not accident of which supplier provides the electricity.

3. But Universal Service neither requires nor should be funded by "general access charges."

The DISCO-administered discount provides the complete mechanism to "collect" funds to cover the cost of the discount. There is no need to set up a surcharge to pour moneys into a separate fund, if the discount is internalized to the DISCO's rates. The Department should permit the DISCO to recover these charges as it does today - rolled into the revenue requirements allocated to classes [per relative rate base, as proposed] and spread through the rates, rather than appearing in a separate access charge.

So long as the costs are internalized to the distribution company, and its functions are non-bypassable, the charges will be non-bypassable as well, and no separate levy is required to accomplish that result. This is not only administratively more convenient, it maintains the recognition that these are functions of an integrated electric utility industry, that are assigned to one component as a convenience of the restructuring process. Providing for universal service guarantees and environmentally sound electric service are not distinguishable in principle from other aspects of the functions of entities providing electric service. They are not add-ons, but rather integral components of service provision.

In any event, such charges should not appear separately on the bill. The Rule is silent on this, but it should be clarified.
Making any given charge a line item on the bill attracts

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[23] (unless the obligation was individualized, as in a "portfolio" standard of some kind).

disproportionate attention to that cost. These charges are likely to be small relative to other components of the bill, but history shows that consumers focus on any separately stated component of the bill. Other components of the bill and thus of the distribution companies' service to the public, all of greater fiscal impact, will not receive the same attention by virtue of not being separately stated on the bill. If the Department chooses to isolate the access charges on the bill, it should require further disaggregation of the other components of the bill. Thus, line items should be created for other costs that have a large dollar impact, or an equal public relations impact, such as the cost of storm damage, or executive salaries, or profit margins. To the extent the DISCO bills and collects for suppliers, the suppliers' costs from nuclear power and fossil fuel sources should be stated separately too.

C. Problems with running discounts through the distribution component only:

1. This method does not require contribution from suppliers to this function. Suppliers will have completely unregulated profits as a result of the creation of the new system. They should contribute (as via access charges for putting their supply into the distribution system) to the preservation of a sound system.

2. More importantly, depending on the relationship of the distribution component to the supply component, the level of discount on the distribution component of the bill could become quite large.

a. Using rough numbers readily available from MECO shows that after the stranded cost component (using the MECO stranded cost proposal for example purposes only) is worked off, if supplies tighten or fuel prices spike, and supply costs increase 30%, the R2 discount as a percentage of DISCO charges would be as high as 72%.[24]

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[24] The calculation took 25% of the expected future bill under the circumstances assumed, and expressed the resulting discount as a percentage of the projected distribution company component of the bill. The 25% figure was developed based on the estimate that the

b. At some point, then, and perhaps now, before the system is put in place, a mechanism to spread the cost responsibility beyond the DISCO billings to end-users should be developed. Access charges to suppliers could provide a supplier contribution to the discount.

D. Restructuring is An Opportunity To Revisit Discount Design For Better Targetting and Cost-Effectiveness

The DPU should take advantage of this opportunity to revisit how discounts are provided, to better target them for achieving universal service goals. The burden a household bears for electricity costs [expressed as a percent of income, or better, percent of Federal Poverty Level Income] is the best gauge of affordability of necessary services.

Many utilities around the country administer bill relief via PIP programs that incorporate the burden concept. PIPs have many benefits:

1. Better targeting - better uses scarce dollars.
2. Also greater reduction in credit and collection problems because reaches the most burdened customers and tailors discount to customer circumstances.
3. Provides for manageable but real responsibility on part of customer - not a "hand-out"
4. Several types of PIPPS - straight PIPPs, PIP credits, tiered discounts, Percent of Bill.
    a. Best is Percent of Bill - shares usage difference impacts between customer and utility.
    b. But flat PIP credits would be most workable in DISCO situation.
        (1) Like Central Maine Power Program
        (2) Could be individualized deterimination of burden and associated credit.
        (3) If administrative costs are a worry [should not be], then use tiered matrix of credits, so customers are bunched by percent of income and range of usage, and

present 35% discount for R-2 allowed off "base" charges is equivalent of 25% off today's total bill.

credit for that cell of matrix is applied to bill.

(4) Flat credit PIP puts all risk of increased use between reevaluations on customer, and thus fosters conservation.

5. Deals with problem that grandfathering current rate designs results in statewide patchwork of discounts and resulting bill impacts.

   a. Disparity in discount level is more important issue than bill impacts, as DPU had worked to keep bill impacts modest throughout the state.

   b. A statewide standard pegged to customer's burden, rather than to existing rate, would put all customers on an even footing.

   c. Switch to new approach, if made now, would be experienced as part of entire switch in approach to provision of electricity, rather than isolated event. Easier to explain to customers who might no longer be eligible for discount on grounds that combination of income and bill means burden not high enough to require credit, despite income below cut-off.

E. No Cap on Effectiveness of Low-Income Rate

Rule Section 11.05(3)(a) should not cap the effectiveness of the affordability rate to the level of protection now in effect. This can be remedied by stating that the level of protection shall be "no less than" the level in effect as of the present time. This general rule, of course, should be supplemented ideally by the PIPP approach, or at the least the more detailed description of the mechanics of the rate protection the DPU has in mind. Note that the California Commission did not cap the amount of the fund for low-income programs in its April 1996 Order.

Other means to augment the funding available for these purposes can be implemented, as well, since the balance between ratepayer impact and adequacy of the fund is likely always to put pressure on the size of the fund. Refundable deposits not claimed by the customer should be paid over to a fund maintained by the DISCO for assistance to low-income customers with energy efficiency. Some states, such as Colorado, have employed a system in which customers are notified when a refund is available, and given the opportunity to designate payment of the refund to the low-income DSM efforts. This could be employed in the case of PBR refunds, for example.

F. Rule should specify statewide eligibility requirements.

The list included in Order did not include those provisions that allow customers to qualify for discount rate on account of low-income, while not receiving means-tested aid (e.g. Commonwealth Electric - 175% of FPL).

VII. SELECTION OF SUPPLIER FOR UNIVERSAL SERVICE AND BASIC SERVICE

A. Several Considerations, Some in Conflict

There are several parameters that the Department rightly identified as bounding the determination of how to provide Universal Service and Basic Service. It is not possible to maximize policy against all of these parameters simultaneously, so balancing and choices must be applied.

Some of the considerations in determination of the energy portion of supply to Universal Service and Basic Service customers are listed below:

1. Universal Service and Basic Service customers, perhaps more than customers who can and do choose competitive alternatives, require stable rates that do not fluctuate seasonally, much less monthly, weekly, daily, or even hourly. They comprise the customers with the least ability to adjust to sudden or large variations in bills. This is so because of the low incomes and fixed incomes of Universal Service customers, and the desire for stability that is the hallmark of the Basic Service "choose not to choose" customer. This makes the use of Power Exchange spot prices a particularly unsuitable choice for supplying these customers.

2. Similarly, both sets of customers, more than other customers, need lower priced supplies, not higher priced "assigned risk pool" prices. To the extent that the costing of energy for such customers leaves them with the least desirable underlying energy cost structure, then the benefits of Universal Service discounts and Basic Service stability will be seriously undermined.

3. DISCO ownership of supply (and resale) raises concerns of self-dealing and the monopolization of large portions of the newly competitive market, at least at the beginning, when more customers are in the "choose not to choose" mode.

4. The traditional rate case method of supplying these customers (alternative 2, Section 11.05(4)(b)) does not prepare customers for competition, and does not relieve the DPU of regulatory responsibility.

B. DPU should consider having DISCO bid out energy supply portion of Universal and Basic Service.

The Department has signaled an interest in exploring alternative mechanisms to meet the needs of a stable, low-cost supply for Basic Service and Universal Service. Holding an auction for the right to provide this service (as a package) could provide many benefits, without involving the Department in the determination of specific rates.

The Universal Service/Basic Service supply contract with DISCO would be for all Basic Service and Universal Service requirements -it will be possible to anticipate what these are, and to provide a service with prices comparable in stability to those provided to competitive. RFPs should specify that bid awards will favor suppliers who offer stable predictable prices.

While some customers individually will have payment risks, the group of customers as a whole will be:

1. large enough to have great diversity and thus a better load factor.

2. stable in its usage, as residential customers.

3. comprised mostly of customers who pay on time - even Universal Service customers and customers terminated by one supplier, once on the basic service terms, will have every incentive to pay on a timely basis, and

4. if Universal Service rates are well-structured, such customers will have improved payment histories.

Thus, this will be an attractive load for a supplier, who could lock up a considerable portion of the market by winning the bid, and would stand to keep many of these customers when then went off Universal Service or Basic Service. A properly conducted bid process would not eliminate DISCO-affiliate self-dealing, but would be more manageable than other alternatives.

In sum, such a method would be superior to the vagaries of Pool pricing (which doesn't exist now in any event), and the headaches of a rate case, and might bring forth truly economic rates for this group of customers. GTE has been describing a similary proposal for Universal Service in the telephone system, which can be referenced for more details, and a copy will be made available on request.

VIII. PBR

A. Exogenous Costs should not include storm costs.

New England is known for storms. They are infrequent, but over a period of years some level of storm damage can be anticipated, and prudent utilities will plan for these events. Storms affect the general economy and competitive businesses when they strike, but such firms have no captive customers to cushion their losses. The purpose of the exogenous factor adjustment should be limited to those events which cannot be anticipated and which affect electric utilities uniquely. Storms do not qualify on either count.

If the concern is that the outage feature in the Service Quality Index is triggered for major storms or hurricanes, that is a separate issue that can be dealt with in the SQI itself. However, the DPU should remember that utility slowness in mobilizing to meet the perils of storms and informing customers of the status is one of the items of service quality that angers consumers the most. They are helpless without electricity and information, and rightly expect utilities to plan for these eventualities. Further, anecdotal reports of cuts in tree-trimming and storm repair part inventories suggests that some Massachusetts utilities may be hard pressed when the next prolonged Noreaster hits. This failure to plan, or economizing at the expense of prudent preparation, should not be rewarded in the SQI or the cost-adjustment formula.

B. Inflation Factor

The proposed rule would allow electric-industry-specific price changes to control the price cap index. This approach does not seem reasonable in light of the tremendous uncertainty about the industry given restructuring. Utilities going through a particularly costly and inefficient transition to competition should not be a benchmark for the economical and forward-looking utility. The inflation factor should be tied to the general economy, and not the electric industry. Any price cap index should have some stability over the term of the plan.

C. Service Quality Index (11.04(5)(b))

The rule presently only provides the general categories to be covered by the index. The commentary does propose that a uniform set of measurements be identified and litigated for each company in the first PBR filing. However, some SQI factors should apply to all companies. Such factors should be provided for in rule, and not litigated in a case in which other utilities and their ratepayers may not be present. The specific list of factors should be set out in the rule.

More importantly, the rule provides that companies shall propose measures to be weighed against "target levels and standard levels," determined by the Department. This provision is unclear and insufficient. It is not clear what the DPU means by target as opposed to standard levels. The language does not make it clear what exactly the DPU will predetermine. And the use of both target and standard levels is an invitation to game the index to the detriment of customers. There is no reason for two "acceptable" levels of service quality. If service quality is below par, it should be brought to acceptable levels. The target for improvement would be built into the index, but not as a basis for additional incentives.

The rule should require the DISCOs to submit data on recent historical performance for all measures proposed for the SQI. The SQI should contain a baseline of acceptable performance reflecting actual recent performance in all areas. If the performance has been sub-par, the index should include a schedule for necessary improvements.

The penalty-only approach is the correct approach. Acceptable behavior should be considered the baseline. However, the penalty is turned into an increase in the productivity offset. While this is not unreasonable, a more effective method for maintaining service quality in the face of the pressures of cost-cutting and the protection of DISCO monopoly is to require a rebate or credit to consumers in the event the penalty is triggered. The reduction in productivity is a hidden service quality penalty, and can be traded off for superior financial results accruing as a result of too much cost-cutting at the expense of service quality. Its financial impact will not be felt between price changes.

However, a public return of penalty money via rebate or credit will immediately pass through to customers the financial compensation for the poor service quality, and provide public reminders of the failure of the DISCO to meet its service obligations. This alone will be a powerful incentive to maintain quality service.

Other forms of redress include free installations for missed appointments (with two parents working, missed appointments are expensive to the customer, in addition to being rude and inconvenient), bill-specific credits for failure to respond to a complaint in a timely manner, and so forth.

High service quality standards are not the enemy of the regulated company. Customers may put up with much in the way of high rates, but ineffective customer service will turn the public against a company quickly. DISCOs should not actively oppose these proposals for strengthening the service quality index.

D. Universal Service Service Quality

The Low-Income commenters renew the call made in their last set of comments for tracking of bill affordability and DSM programs in the PBR, for the reasons stated previously.

IX. DEFINITIONS

A. Electric Company and Electric Service

The terms Electric Company and Electric Service should be defined to cover firms that provide generation, transmission <u>or</u> distribution services. The use of the word "and" appears to restrict the coverage of the term to entities that provide all these services. This is contrary to the statute, and needlessly ties the Commission's hands.

B. Low Income Customer

The definition of Low Income Customer should be consistent statewide. Presently the rule simply carries forward the existing patchwork of definitions that have evolved over time. While they are reasonably consistent, this is a good time to bring statewide consistency into the definition. Note also that the categories listed by the Department in the Order do not capture all the categories used; some companies have a guideline of 175% of the Federal Poverty Level. To the extent this requires adjustments to discount programs, the rule should provide for an evolution to a statewide standard of qualification of customers.

X. CONCLUSION

Much work remains to be done to create a workable structure for retail competition. The Department is taking the right course in doing the hard work of sorting out the regulations BEFORE embarking on competition, rather than seeing what kind of a mess is created and then trying to go back to fix it.

The Low-Income commenters commend the Department on its commitment to energy efficiency services and to universal service. The concepts set forth in the proposed rules are generally workable in the areas of DSM and discounts. Several proposed improvements are suggested. A technical potential report and plan to work off the unmet potential for efficiency in the homes of low-income consumers, as well as pilot "whole house" programs, are proposed. Use of statewide eligibility standards and percentage of income payment formats for discounts are two key suggestions for the discount programs.

Similarly, the Basic Service concept may be the best compromise between competing values in the effort to fashion a way to protect customers from falling through the cracks, without leaving them at the mercy of unfiltered market forces, given the Department's intention to move to retail competition. An auction to select the Universal and Basic Service provider should be considered to minimize the disruption to such customers from higher underlying energy rates.

The Low-Income commenters press again for the Department to consider their proposed PBR provisions for universal service, presented in their April 12 comments.

Several detailed recommendations are advanced to bound the unfettered discretion of suppliers in picking and choosing among customers. These provisions will not only help to enforce existing statutes against discrimination, but will create a workable balance between discretion and equity. They will also give the Department the information it needs to monitor the roll-out of competition and head off abuses.

Respectfully Submitted,

The Low Income Commenters

by: ______________________________

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